DAUD PASARRIN v. PP

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ABANG ISKANDAR JCA
AHMADI ASNAWI JCA
[CRIMINAL APPEAL NO: Q-05(M)-183-07-2015]
26 MAY 2016

CRIMINAL LAW: *Murder – Defence – Accused sentenced to death – Appeal against decision of High Court – Sudden and grave provocation – Self-defence – Whether use of defence justified – Deceased attacked accused with parang – Allegation against – Whether accused momentarily lost self control over his emotions and acted in a manner detrimental to deceased – Whether provocation grave and sudden – Whether accused inflicted more harm than was necessary – Nature and number of injuries suffered by deceased – Consideration of – Whether accused exceeded his limits of self-defence – Whether accused inflicted injuries in order to ultimately kill deceased – Whether trial judge handled evidence and applied legal principles correctly – Whether appellate intervention warranted – Penal Code, ss. 96 & 102*

CRIMINAL PROCEDURE: *Defence – Sudden and grave provocation – Self-defence – Deceased attacked accused with parang – Allegation against – Whether accused momentarily lost self control over his emotions and acted in a manner detrimental to deceased – Whether provocation grave and sudden – Whether accused inflicted more harm than was necessary – Nature and number of injuries suffered by deceased – Consideration of – Whether accused exceeded his limits of self-defence – Whether accused inflicted injuries in order to ultimately kill deceased – Whether trial judge handled evidence and applied legal principles correctly – Penal Code, ss. 96 & 102*

The accused was charged under s. 302 of the Penal Code and sentenced to death by the High Court for the murder of the deceased. The facts revealed that the incident took place in a shared worker's quarters. *Vide* his defence, the accused pleaded the defence of sudden and grave provocation and self-defence since it was alleged that the deceased had called the accused and his parents 'dogs' in a rude and loud manner. The accused claimed that the deceased was the one who started to attack the accused by swinging a parang at the accused person's head but missed it. According to the accused, both of them struggled and the accused managed to get hold of the parang when he then slashed the deceased a number of times with the said parang. Dissatisfied with the decision of the High Court, the accused filed an appeal to this court. Among the grounds raised were that the trial judge failed to (i) consider the evidence that the deceased still continued attacking the accused after the latter got hold of the parang and the fact that the deceased tried to snatch the parang; (ii) consider the action of the deceased in swinging

A the parang at the accused which amounted to grave and sudden provocation; and (iii) evaluate the evidence and report by the psychiatrists to show that the accused was a credible witness.

Held (dismissing appeal; affirming decision of the High Court)
Per Abang Iskandar JCA delivering the judgment of the court:

B

(1) The trial judge was correct in calling the accused to enter his defence. Murder, as simply stated, means intentional killing of a person without any lawful excuse. On the facts, the killing of the deceased by the accused had not been an accident nor had it been a result of a mistake on the part of the accused. The trial judge had addressed the law on the

C specific defences which the accused had sought to rely on in order to escape from being found guilty of the deceased's murder. (paras 22 & 24)

(2) The onus lies with the accused to show the circumstances of justifying self-defence and grave and sudden provocation and that the law does not

D presume the existence of those circumstances. By merely raising or creating a reasonable doubt as to the existence of those circumstances would not, in law, be sufficient for the accused to find sanctuary under those two defences. The provocation must be grave and it must be sudden. The rationale was that such a situation would cause even a

E reasonable man to momentarily lose his self control over his emotions and to then act in a manner detrimental to the victim (*Lorensus Tukan v. PP;* refd). (paras 25 & 26)

(3) The reason behind the accused person's fatal blows with the parang against the deceased had been because of the so-called derogatory words

F allegedly used by the deceased in describing the accused person and his parents as 'dogs'. However, the evidence had suggested nothing of that sort. During trial, the accused admitted that he was not angry, though he felt insulted. In fact, he was normal. In other words, he did not lose his self-control as a result of the use of the word 'dogs' by the deceased

G to describe him and his parents. In the circumstances, there was no error in the trial judge's conclusion on the matter of the defence of grave and sudden provocation. The accused failed to establish this defence on a balance of probabilities. (paras 28 & 30)

(4) The right to private defence resides in s. 96 of the Penal Code. The onus

H lies with the accused to show that such circumstances existed thereby bringing his case within the general exception in the Penal Code, including the defence of self-defence. The right of self-defence is not a *carte blanche* right to unnecessarily inflict bodily harm or injury onto others at the slightest opportunity. Indeed, the law has set out strict

I parameters within which that right may be invoked and when it should cease to be pursued by the accused. Among others, in the context of this

case, there must exist the necessity to take away a person's life. As such, that right of self-defence did not extend to inflicting more harm than was necessary. (para 31)

(5) Going by the nature and the number of injuries suffered by the deceased, the accused had exceeded the limits of self-defence. The injuries in themselves were damning against the accused. In total, there were 49 injuries and six of those were defensive wounds and some were incised wounds. These wounds spoke volumes as to what had happened within the confined walls of the quarters on that fateful day. The law as contained under s. 102 of the Penal Code states that once the reasonable apprehension of threat or danger to life and limbs presents itself, the right of self-defence arises and it continues for as long as such threat or danger persists. However, once the threat or danger is subdued or diminished, then continued exercise cannot find legitimate support. On the facts, the moment the accused had disarmed the deceased, he should have desisted from further attacking him with the parang. Instead, as evidenced by the numerous injuries, the accused had inflicted such injuries as to ultimately kill the deceased. In the circumstances, the accused had attacked an unarmed and defenceless person. (paras 33 & 35)

(6) There was no evidence that the wounds suffered by the deceased were self-inflicted, as indeed, that was not the case advanced by the accused. In light of the numerous injuries suffered by the deceased, it was understandable that the inferences as derived from the trial judge were so clearly justified. It would be so incredible that those injuries were inflicted on the deceased so as to prevent him from snatching the parang away from him. The pathologist's independent evidence on the numerous injuries sustained by the deceased had completely negated the accused person's suggestion of aggression from the deceased in the direction of the accused. It was proven beyond any reasonable doubt that the accused was the aggressor. (para 35)

(7) In light of the overwhelming evidence, especially pertaining to the evidence of the pathologist and the silent evidence surrounding the 49 injuries sustained by the deceased and the evidence of the accused himself, the evidence of the two psychiatrists would not count for much in forwarding the case of the accused. Insanity was never raised as a defence. The omission on the part of the trial judge to address that issue had not occasioned any miscarriage of justice to the accused so as to vitiate the conviction entered against him. In the circumstances, the trial judge had handled the evidence and applied the legal principles correctly to the evidence adduced before him. Hence, no appellate intervention was in order since no appealable error had been committed. The prosecution, thus, succeeded in proving the charge for murder against the accused beyond reasonable doubt. (paras 37-39)

A **Case(s) referred to:**
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Ikau Anak Mail v. PP [1973] 1 LNS 51 FC ***(refd)***
Lorensus Tukan v. PP [1988] 1 CLJ 143 SC ***(refd)***
Rikky Purba v. PP [2014] 3 CLJ 607 CA ***(refd)***
Syed Ali Syed Abdul Hamid & Anor v. PP [1982] CLJ 188A; [1982] CLJ (Rep) 340 FC
B ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 105
Penal Code, ss. 96, 102, 302

C **Other source(s) referred to:**
Hari Gour, *Penal Law of India*, vol 3, 1st edn, p 2011

For the appellant - Ranbir Singh Sangha; M/s Ranbir S Sangha & Co
For the respondent - Awang Armadajaya Awang Mahmud; DPP

[Editor's note: For the High Court judgment, please see PP v. Daud Pasarrin [2015] 1 LNS
D *735 (affirmed).]*

Reported by Kumitha Abd Majid

JUDGMENT

E **Abang Iskandar JCA:**

[1] Daud Pasarrin ("the accused person") had stood charged before the High Court sitting at Sibu, Sarawak, for the murder of Daud Duma. The charge against him reads as follows:

F > That you, Daud Pasarrin (M) (Passport No. MA 068618) on the 20th July, 2013, at about 2.30 p.m. at Rumah Pekerja Kem Pembalakan Penyuan Shin Yang, Belaga, in the district of Belaga, in the State of Sarawak, did commit murder by causing the death of Daud Duma (M) (Passport No. W 585201), and that you thereby committed an offence punishable under section 302 of the Penal Code.

G **Brief Facts Of The Case**

[2] The brief facts may be stated as follows: At the material times, according to Agus Tina Semon (PW3) she had lived with her husband in a shared worker quarters where her husband was working, together with Daud Duma ("the deceased") and Daud Pasarrin, the accused person. The
H accused person is PW3's brother-in-law.

[3] On 20 July 2013 at about 1pm, PW3 went to the canteen nearby the quarters to take food supply. At that time, there were only the accused person and deceased inside the quarters.

I **[4]** When she came back after 20 minutes, she heard noises and sound of somebody was running inside the quarters. She was scared and ran to the workshop for help. There she met Lau Ing Tieu (PW4). The workshop was about 15 minutes walking distance from the quarters.

[5] PW4 testified that after being informed by PW3, he called Sarjan Suloon Anak Gat (PW10) who was at Anding Canteen at that time with Sarjan Nevyn Anak Kedit (PW9). PW4 went there to fetch PW10 and PW9 and proceeded to the quarters in PW4's car.

[6] PW10 and PW9 testified that they arrived at the quarters at about 2.30pm. As the door was locked from inside, they looked through the window and saw the accused person was walking inside the quarters and that he was holding a parang.

[7] PW10 and PW9 then forced opened the door. At that time, the accused was lying near the parang. They also saw the deceased lying on the floor heading to the kitchen room. They arrested the accused and later identified him as Daud Pasarrin.

[8] The accused person was later charged for the murder of the deceased as per abovementioned charge.

The Defence

[9] At the end of the prosecution's case, the High Court found a *prima facie* case had been made out by the prosecution. The accused person was ordered to enter on his defence. The defence mounted by the accused person had been premised on self-defence and of grave and sudden provocation.

[10] It was the accused person's evidence that the deceased had called him and his parents 'dogs' in a rude and loud manner. The deceased was the one who started to attack the accused person by swinging a parang at the accused person's head but missed. Both of them struggled and according to the accused person, he managed to get hold of the parang. The accused person then slashed the deceased a number of times with the parang.

[11] Dr Norliza binti Ibrahim (PW13), who conducted the post-mortem on the deceased's body, had testified that the cause of death was neck injury due to sharp force trauma.

Findings Of The Learned High Court Judge At End Of Defence's Case

[12] The learned High Court Judge at the end of the defence's case, found the accused person guilty as per charged and had proceeded to convict him. The accused was sentenced to death as mandated by law as contained under s. 302 of the Penal Code.

[13] Aggrieved by such decision by the learned High Court Judge, the accused person had lodged his appeal against the said decision. Hence, this appeal before us.

The Appeal

[14] Before us, it was indicated to us quite frankly by Mr Ranbir Singh Sangha, learned defence counsel that it was not the defence case that the accused person did not kill the deceased on that fateful day. The defence pleaded had been self-defence and sudden fight and grave provocation.

[15] Mr Ranbir Singh Sangha submitted that the learned trial judge did not consider the evidence that the deceased still continued attacking the accused after the accused had obtained the parang and the fact that the deceased tried to snatch the parang.

[16] The learned trial judge also did not consider that not only the words uttered by the deceased but also the action of the deceased in swinging the parang at the accused amounted to grave and sudden provocation.

[17] It was also the complaint by the defence counsel that the learned trial judge never evaluated the evidence and report by the psychiatrists namely Dr Lau Kim Kah (DW2) and Dr Emmanuelle Joseph Pereira (DW3) to show that the accused was a credible witness and would not have been coached.

[18] The Deputy Public Prosecutor on the other hand submitted that the defence did not meet the pre-requisites of a defence of a sudden fight namely:

(a) there is fight that started from the deceased;

(b) the accused was not exercising his right of private defence;

(c) the accused did not have undue advantage or acted in a cruel manner; and

(d) the deceased contributed to the fight and invited its escalation.

[19] It was also submitted by the learned deputy that the defence had failed to fulfil the four cardinal justification before the killing can be justified in a plea of self-defence as follows:

(a) the accused must be free from fault in bringing about the encounter;

(b) there must be present an impending peril to life or of great bodily harm either or so apparent;

(c) there must be no safe or reasonable mode of escape by retreat; and

(d) there must have been a necessity of taking life.

[20] The prosecution also submitted that the defence failed to make out the defence of grave and sudden provocation as there was no provocation at all. If there had been any, it was neither grave nor sudden.

Our Findings

[21] After considering the records of appeal and submissions by both parties, we were unanimously of the view that the appeal was without merit, thus we had dismissed the appeal. The conviction entered by the learned High Court Judge on 29 June 2015 against the accused person was safe to be affirmed and the death penalty followed thereof was also affirmed. These are now our grounds having so decided.

[22] First, we need to reiterate that on the evidence as led by the prosecution, we were satisfied that the learned trial judge was correct in calling the accused person to enter on his defence to the charge of murder. Murder, as simply stated means intentional killing of a person without any lawful excuse. Evidence had indeed shown that the killing of the deceased by the accused person had not been an accident, nor had it been a result of a mistake on the part of the accused person. Otherwise, it would have been a total exoneration of the accused person. Indeed the accused had not disputed the fact that he had killed the deceased. On the *prima facie* level, the charge for murder had been made out by the evidence as led by the prosecution. The applicable test that is in play at the end of the prosecution's case as enunciated in the case of *Balachandran v. PP* [2005] 1 CLJ 85 had been fulfilled. We agreed with the learned trial judge that on the evidence as it stood at the end of the prosecution stage, was such that if the accused person were to elect to remain silent if called to enter on his defence, such evidence was strong enough to found a conviction to be entered against him. As such, the prosecution was correct to say that the defence had rightly been called by the learned trial judge for the offence of murder.

[23] At the beginning of the appeal before us, besides indicating to us that the accused person did not dispute having killed the deceased. Learned counsel for the accused person had also submitted before us that he was only pursuing the defence of self-defence and the defence of grave and sudden provocation and that it was his client's case that the learned trial judge was in error when he ruled that the accused person had failed to avail himself of the benefit of those two legal defences as provided under the Penal Code.

[24] We had perused the grounds of judgment of the learned trial judge and noted that he had addressed the law on the specific defences which the accused person had sought to rely on in order to escape from being found guilty of the murder of Daud Duma, the deceased. It must be stated here that the learned trial judge had delved into some detail on the applicable legal principles in play in the trial before him.

[25] It is pertinent to recall that the onus lies with the accused person to show to the court the circumstances of justifying self-defence and grave and sudden provocation and that the law does not presume the existence of those circumstances (see s. 105 of the Evidence Act 1950). What that means, in effect, is that the accused person will have to rebut that presumption by proving that the circumstances did indeed exist, thus justifying his act of killing the deceased. As like all cases involving rebuttal of a statutory presumption, the accused person will have to lead evidence on the balance of probabilities, in doing so. Just by merely raising or creating a reasonable doubt as to the existence of those circumstances will not, in law, be sufficient in order for the accused person to find sanctuary under those two defences.

[26] Having dealt with that, we will deal with the first defence of grave and sudden provocation. The learned trial judge found that the accused person had failed to establish this defence. We had looked at his reason for rejecting the accused person's defence. That had brought us to para. 31 in his grounds of judgment. With respect, we found nothing amiss in the manner as to how he had arrived at his conclusion, bearing in mind the evidence he had before him. The law, as earlier stated was clear. The provocation must be grave and it must be sudden. The rationale being that such a situation would cause even a reasonable man to momentarily lose his self-control over his emotions and to then act in a manner detrimental to the victim. The learned trial judge had alluded to the correct test in determining whether or not grave and sudden provocation existed in a given circumstances by referring to the case of *Lorensus Tukan v. PP* [1988] 1 CLJ 143; [1988] 1 CLJ Rep 162 where it was held as follows:

> The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control (see *Nanavati v. State of Maharashtra* AIR [1962] SC 605).

[27] See also the case of *Ikau Anak Mail v. PP* [1973] 1 LNS 51; [1973] 2 MLJ 153 where the Federal Court had also reiterated similar view on the matter of grave and sudden provocation. Dr Hari Gour, in his acclaimed work embodied in the book *Penal Law of India*, vol 3, 1st edn, at p. 2011, had likened the immediate preceding act amounting to a 'grave and sudden provocation' as a situation akin to the proverbial last straw that breaks the camel's back. The learned authors of Ratanlal and Dhirajlal in the *Law of Crimes* had also commented that "in determining that question the court may also consider, along with other factors, the nature of the retaliation by the accused, having regard to the nature of the provocation".

[28] Applying this test to the facts as could be deduced from the evidence adduced before him, the learned trial judge had concluded that there was no grave and sudden provocation known in law that could be established therefrom. In coming to that conclusion, he had alluded to the evidence coming from the accused person himself. It was impressed upon us that the reason behind the accused person's fatal blows with the parang against the deceased had been because of the so-called derogatory words allegedly used by the deceased in describing the accused person and his parents as 'dogs'. However, the evidence had suggested nothing of that sort. The learned trial judge had adverted to that part of the evidence in his grounds of judgment in para. 31 as follows:

> Q1006: What did Daud Duma do after you asked him this question?
>
> A: He called me a dog (anjing).
>
> Q1007: Did he say anything after he called you a dog?
>
> A: He also called my parents as dog.

Q1008: When you called you and your parents "dogs", in what tone of voice was he speaking in?

A: He said it very rudely.

Q1009: Did he say it softly or loudly?

A: Loudly.

Q1010: Did you take what he said about you and your parents as an insult?

A: Yes, I did.

Q1011: How did you feel what he had said about you and your parents?

A: I felt normal.

Q1012: Did you have any feel of shame that been insulted?

A: I did not.

Q1013: Did you feel angry?

A: I didn't.

[29] Premised upon that consideration, the learned trial judge had concluded as follows:

> [31] From the evidence adduced, it is clear that when the Deceased called the Accused and his parents as dogs, the Accused said that although he felt ashamed, he was normal. It meant that he still had self-control and that he was not 'provoked'.

[30] With respect, we did not see any error in the learned trial judge's conclusion on the matter of the defence of grave and sudden provocation that was raised by the accused person. The accused person had admitted that he was not angry, though he felt insulted. In fact he was normal. In other words, he did not lose his self-control as a result of use of the word 'dogs' by the deceased to describe him and his parents. We agreed with the learned trial judge that the accused person had failed to establish this defence on the balance of probabilities. We therefore saw no merit in the complaint against the conclusion made by the learned trial judge in that regard by learned counsel.

[31] As regard the defence of self-defence, the law as contained under the Penal Code is also clear. The right of private defence resides in s. 96 of the Penal Code. That section stipulates that "Nothing is an offence which is done in the exercise of the right of private defence". The right covers both the defence of property as well as of the person, from unjustified intrusion. Again the onus lies with the accused person to show to the court that such circumstances existed thereby bringing his case within the general exception in the Penal Code, including the defence of self-defence. (See also the case of *Rikky Purba v. PP* [2014] 3 CLJ 607). We noted that the learned trial judge had stated the

law correctly in paras. 34-40 in his grounds of judgment. We did not propose to add on to what had been rightly spelt out by him in those paragraphs referred to above. Suffice to say that the right of self-defence is not a *carte blanche* right to unnecessarily inflict bodily harm or injury onto others at the slightest opportunity. Indeed the law has set out strict parameters within which that right may be invoked and when it should cease to be pursued by the accused person. Among others, in the context of this case before us, there must exist the necessity to take away a person's life. As such, that right of self-defence does not extend to inflicting more harm than is necessary. Section 102 of the Penal Code expressly stipulates:

> The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

[32] Essentially it is but a shield, and only in grave circumstances can it legitimately partake or assume, as it were, the role of a sword. The exercise of that right is therefore fully circumscribed. It is a right born out of necessity in the form of self-help to protect oneself from harm's or danger's way.

[33] On the evidence, the learned trial judge rejected the accused person's defence of self-defence. In brief, going by the nature and the number of the injuries suffered by the deceased, he was of the view that the accused person had exceeded the limits of self-defence. His conclusion can be found in para. 50 of his grounds of judgment like so:

> By looking at the nature and numerous injuries sustained by the Deceased in this case, this Court finds that the existence of the substantial number of injuries suffered by the Deceased, clearly showed that the Accused had inflicted more harm than it is necessary to inflict for the purpose of his self-defence. It is clear that the Accused has already over powered the Deceased and had possession of the said parang and thus there was no necessity for the Accused to inflict further and numerous other injuries on the Deceased. There were 6 defensive wounds and 43 other injuries found on the Deceased's body thus meaning that the Accused has inflicted 49 wounds on the Deceased which showed that the Accused had inflicted much force and/or injuries than was necessary to defend himself bearing in mind that those injuries were inflicted at the material time when the Accused had possession of the said parang and the Deceased had no weapon.

[34] The learned trial judge then concluded that the accused person had exceeded the limits of his right of self-defence "as reasonable apprehension of danger or an imminent threat to the accused's life had ceased after he obtained possession of the said parang". (See para. 51 of his grounds of judgment.)

[35] We had occasion to peruse the relevant evidence pertaining to this defence raised by the accused person. In the result, we saw no reason whatsoever to differ in our finding from that of the learned trial judge. The injuries in themselves were damning against the accused person. They had been described and explained by the pathologist SP13. In total, there were 49 injuries and six of those were defensive wounds and some were incised wounds. Those wounds spoke volumes as to what had happened within the confined walls of the quarters on that fateful day. There was evidence that the accused had managed to disarm the deceased and yet he had continued to slash at him. That must account for the numerous defensive wounds that were suffered by the deceased. The law as contained under s. 102 of the Penal Code says that once the reasonable apprehension of threat or danger to life and limbs presents itself, the right of self-defence arises and it continues for as long as such threat or danger persists. But once the threat or danger is subdued or diminished, then continued exercise cannot find legitimate support. From the evidence as adduced in this appeal before us, it was clear to us that the moment the accused person had disarmed the deceased, he should have desisted from further attacking him with the parang. But instead, as evidenced by the numerous injuries, the accused person had inflicted such injuries as to ultimately kill him. In truth, the accused had attacked an unarmed and defenceless person, as evidenced by what SP13, the pathologist, described as defensive wounds. Those wounds showed that the deceased had only his hands to ward off the parang attack by the accused person on him. There was no evidence that those wounds suffered by the deceased were self-inflicted, as indeed, that was not the case advanced by the accused person. In light of the numerous injuries suffered by the deceased, it was understandable that the inferences as derived therefrom by the learned trial judge were so clearly justified. It would be so incredible that those injuries were inflicted on the deceased so as to prevent him from snatching the parang away from him. The pathologist's independent evidence on the numerous injuries sustained by the deceased had completely negated the accused person's suggestion of aggression coming from the deceased in the direction of the accused person. Indeed, the evidence had shown that the reverse had been nearer to the truth. It was proven beyond any reasonable doubt that it was the accused person who was the aggressor.

[36] It did not escape our notice as well that in his defence, the accused person said that he only swung and slashed the parang at the deceased a mere four times, namely three times in the front and one time at the back (see notes of proceeding, as at p. 222, record of appeal vol. 1). Of course, in light of the overall evidence, it was not disputed that there were 49 injuries in all found on the person of the deceased's body, upon an autopsy conducted on it by SP13, the pathologist. Clearly, the accused person had lied on this issue in trying to downplay the extent of his vicious attack against the deceased with

A the parang. The Federal Court, in the case of *Syed Ali Syed Abdul Hamid & Anor v. PP* [1982] CLJ 188A; [1982] CLJ (Rep) 340 had occasion to say as follows, at pp. 345-346:

> Apart from the fact that appellant No. (2) had possession and control of the car during the relevant period, i.e. between the evening of 13 August
B and forenoon of 15 August 1977 and the fact that he had opportunity to conceal the opium in the car during the period, there are two other circumstances which go to show that appellant No. (2) had the necessary knowledge. We recall that he told PW4 that the purpose of borrowing the car was to go to Terengganu. This was a deliberate lie as he never intended to go to Terengganu at all but to Singapore, which he did. We also recall
C that he told PW4 that he needed the car for two days. And as such there was no reason at all for him to see. PW4 again in the evening of 14 August asked for permission to use it further on the 15 August. Such permission was already given to him. In other jurisdictions a false statement made by an accused person concerning the surrounding circumstances in which an offence was committed whilst he had an opportunity to commit the
D offence can be regarded as a corroboration of the evidence against him. *Eade v. The King* [1924] 34 CLR 154 and also *Regina v. Lucas* [1981] 3 WLR 120 also *R v. Tripodi* [1961] VR 186. We accept the decisions in these cases to be good law. In this case we hold that the representation he made to PW4 regarding the purpose of borrowing the car was a deliberate lie and
E is therefore a corroborative evidence against him for which he must explain. Such lie is a reflection of his consciousness of guilt as regards the use he intended to make of the car in question.

[37] There was one other issue that was raised before us during oral submissions by learned counsel. It was submitted before us that the learned
F trial judge had failed to take into account the evidence of the two psychiatrists who had examined the accused person. It was submitted before us that these two psychiatrists' evidence would have borne out the fact that the accused person to be a credible person, worthy of belief. Suffice for us to state here that in light of the overwhelming evidence especially pertaining to the evidence of the pathologist (SP13) and the silent evidence surrounding the 49
G injuries sustained by the deceased, and the evidence of the accused person himself as was alluded to by the learned trial judge in para. 31 of his grounds of judgment, the evidence of the two psychiatrists would not, with respect, count for much in forwarding the case of the accused person. It was noted by us as well that insanity was never raised as a defence. In other words,
H nothing turned on that argument raised by learned counsel in light of the totality of the evidence adduced before the learned trial judge. To our mind, the omission on the part of the learned trial judge to address that issue had not occasioned any miscarriage of justice to the accused person so as to vitiate the conviction entered against him.

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[38] On the whole, we could not find any reason to depart from the findings made by the learned trial judge on the pertinent issues raised in the case before him. He had handled the evidence and applied the legal principles correctly to the evidence adduced before him. We were therefore of the view that no appellate intervention was in order, as there was no appealable error having been committed by him.

[39] In the result, we agreed with the learned trial judge that the prosecution had succeeded in proving the charge for murder against the accused person beyond reasonable doubt. The accused person had failed to prove his defences on the balance of probabilities and he had also failed to raise any reasonable doubt as to his guilt. We endorsed the learned trial judge's conclusion as contained in para. 54 and his final order in para. 55 of his grounds of judgment.

[40] In the upshot therefore, we had dismissed the appeal by the accused person, as it had been one that was without any merit. We had also affirmed both his conviction for murder as per the charge and the sentence by hanging as ordered by the learned trial judge. We had so ordered accordingly.